IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

GREAT FALLS DIVISION

JAY NELSON, Plaintiff, vs. FOREST RIVER, INC. And DOES 1-25, Defendants.	Civil Docket No. CV-22-49-GF-BMM

Transcript of Motion Hearing

Missouri River Federal Courthouse
125 Central Avenue West
Great Falls, MT 59404
Tuesday, February 21, 2023
2:40 p.m. to 4:07 p.m.

BEFORE THE HONORABLE BRIAN MORRIS

UNITED STATES CHIEF DISTRICT COURT JUDGE

Yvette Heinze, RPR, CSR
United States Court Reporter
Missouri River Federal Courthouse
125 Central Avenue West
Great Falls, MT 59404
yvette_heinze@mtd.uscourts.gov
(406) 454-7805

Proceedings recorded by machine shorthand
Transcript produced by computer-assisted transcription

APPEARANCES

PRESENT ON BEHALF OF THE PLAINTIFF:

C. Tab Turner (via video)
TURNER & ASSOCIATES, P.A.
4705 Somers Avenue, Suite 100
North Little Rock, AR 72116

Daniel B. Bidegaray (via video)
BIDEGARAY LAW FIRM
1700 West Koch, Suite 305
Bozeman, MT 59715

Keith D. Marr
Gregory Pinski
Dennis P. Conner (via video)
CONNER & MARR, PLLP
PO Box 3028
Great Falls, MT 59403-3028

PRESENT ON BEHALF OF THE DEFENDANTS:

Mark Hayden
Spencer Shields Cowan (via video)
TAFT STETTINIUS & HOLLISTER LLP
425 Walnut Street
Suite 1800
Cincinnati, OH 45202

Maxon R. Davis
DAVIS HATLEY HAFFEMAN & TIGHE
PO Box 2103
101 River Drive North The Milwaukee Station
Third Floor
Great Falls, MT 59401-2103

PROCEEDINGS

(Open court.)

THE COURT: Madam Clerk, please call the next case on the Court's calendar.

THE CLERK: This Court will now conduct a motion hearing in Cause Number CV-22-49-GF-BMM, Nelson versus Forest River.

THE COURT: Good afternoon, Mr. Marr.

MR. MARR: Hi, Judge.

THE COURT: Mr. Pinski. And I have, I think, Mr. Turner on Zoom and Mr. Conner and Mr. Bidegarary. You're all there?

MR. TURNER: Yes, sir.

THE COURT: Good afternoon, Mr. Davis and Mr. Hayden.

MR. HAYDEN: Yes, sir.

THE COURT: I have on Zoom, Mr. Cowan?

MR. COWAN: Yes, Your Honor.

THE COURT: All right. Great.

So this is a motion to dismiss filed by Defendant Forest River, Document 49, and also Forest River's motion to strike class allegations, Document 51.

So who's going to argue for Forest River?

MR. HAYDEN: I am, Your Honor.

THE COURT: All right. Go ahead, please, Counsel.

MR. HAYDEN: Your Honor, would you like me to argue

both motions or argue --

THE COURT: Yes, please, both of them.

MR. HAYDEN: Good afternoon, Your Honor. Defendant Forest River moves to dismiss Plaintiff Jay Nelson's third amended complaint for lack of jurisdiction under Federal Rules of Civil Procedure, Rule 12(b)(1) and 12(b)(6).

Alternatively, if this Court exercises jurisdiction, it should dismiss plaintiff's third amended complaint under Rule 12(b)(6) because plaintiff has not alleged a viable claim.

Excuse me, I think I said we're moving to dismiss for lack of jurisdiction under 12(b)(6). That should be just 12(b)(1).

The facts of this case, Your Honor, are fairly straightforward and simple. Plaintiff alleges that in May of 2020, while he was towing his 2019 Forest River recreational vehicle, a wire connected to the RV overheated and started to smoke. Fortunately, this incident caused no harm. Plaintiff and his family were not harmed. The smoke did not damage the RV. Plaintiff's pickup was not damaged, And none of his other property was damaged.

And plaintiff paid nothing to fix the RV. Plaintiff took the RV to a Forest River dealer here in Montana, which repaired the RV, and Forest River reimbursed the dealer for those repairs.

Plaintiff alleges that a design defect caused the

wire to overheat. Plaintiff did not disavow Forest River or its RVs.

About a month after the incident with his original RV, plaintiff traded in his original RV and purchased a new 2020 Forest River RV. Plaintiff doesn't complain of any problems with that replacement RV. Nonetheless, plaintiff hired an attorney, and together plaintiff and his attorney hired an electrician to inspect and modify the replacement RV's wiring. Plaintiff paid the electrician $300 for these modifications. Plaintiff's attorney, who hired the electrician as a consultant, paid about $200 for the consulting work.

If you look at plaintiff's preliminary pretrial statement at page 37 -- and that's ECF Number 22 -- there, in that statement, the plaintiff states that he hired an electrician at the cost of $300 to make these changes to the replacement RV.

It says in paragraph 34, and I quote, "After discovering the cause of his RV fire, Jay hired an electrician, at the cost of $300, to make repairs to the replacement RV to bring it in compliance with NFPA 1192, Article 110, Part A, Items 2, 4, 5, 6, and 8, and ANSI/RVIA LV 3-1, 3-6, and 5-1 standards."

So in the preliminary pretrial statement, the plaintiffs said very clearly that the cost of making these alleged repairs to the replacement RV cost the plaintiff $300.

Plaintiff now seeks reimbursement for his cost, a cost he voluntarily incurred, to make these changes to the replacement RV, and he alleges a design defect that never manifested itself as a defect in this replacement RV and caused no harm.

First, Your Honor, I'd like to address CAFA jurisdiction. This Court should dismiss plaintiff's complaint under Rule 12(b)(1) because even after amending his complaint three times, plaintiff has not shown that jurisdiction exists under the Class Action Fairness Act known as CAFA. To invoke CAFA jurisdiction, a party must show, first, that a hundred or more plaintiffs comprise the putative class; and, second, that the putative class's aggregate damages exceed 5 million. It's our position, Your Honor, that plaintiffs can't satisfy that second requirement.

Here, plaintiffs claim that 12,662 Forest River RVs have been sold since 2005. That's paragraph 3 of the third amended complaint, ECF Number 45. There, the plaintiff alleges 12,662 Puma RVs have been sold by Forest River.

So even if there are 12,662 separate plaintiffs, plaintiff has not shown that the putative class's aggregate damages exceed 5 million. Plaintiff alleges that they spent 300 -- that he spent $300 making these changes to the replacement RV. And if you take $300 across 12,662 plaintiffs, that produces only $3.8 million in aggregate damages. So

because the aggregate amount in controversy is less than 5 million, there is no CAFA jurisdiction.

Now, plaintiff alleges here that he can meet the threshold of 5 million by including a $200 consulting fee that his attorney paid to the consulting electrician. But that makes no sense because those costs are not costs incurred by the plaintiff, and potential class members would only need to spend $300 to make these alleged repairs to their RVs, not $500.

Plaintiff also alleges that they can meet the threshold by including punitive damages, but he identifies no authority that permits the recovery of putative damages for any of his claims. In fact, the Montana Consumer Protection Act, at Section 30-14-133, expressly precludes putative damages.

Finally, plaintiffs allege that he can meet the threshold by including attorney fees, and attorney fees can be considered in reaching the CAFA threshold. But only the party asserting CAFA jurisdiction must prove the amount of attorney fees at stake by a preponderance of the evidence and must make this showing with summary judgment-type evidence. That's the *Fritsch v Swift Transportation* case. It's Ninth Circuit decision, in 2018.

And even when a party is entitled to attorney fees, it must still provide a reasonably specific showing as to why a certain fee award is appropriate. That's the *Gaasterland v*

Ameriprise Financial Services case. That's a case out of the Northern District of California in 2016.

Here, plaintiff has made no effort to specifically show how their attorney fees would get them to $5 million. They haven't made any effort to show specifically how they would get that additional $1.2 million in attorney fees to get to the $5 million threshold.

THE COURT: Mr. Hayden, in the complaint, the third amended complaint, isn't it true that the plaintiff alleges damages of the cost to repair of $825?

MR. HAYDEN: Yes, sir. Well, that is the -- that's really not the plaintiff's cost of repair. That's the cost that the plaintiff -- excuse me -- the plaintiff took his original RV to a dealership in Montana, and they did $825's worth of repairs under the warranty. But then Forest River reimbursed the dealer for that $825. So the plaintiff didn't incur any of those costs.

THE COURT: They're covered under the warranty for the RV?

MR. HAYDEN: Yes, sir.

THE COURT: Is that warranty something that everyone gets at the time of purchase, or do you pay extra for it?

MR. HAYDEN: I believe everyone gets a warranty, Your Honor. They get a one-year warranty.

Your Honor, moving on from CAFA jurisdiction, we also

move to dismiss plaintiff's third amended complaint under Rule 12(b)(6) because plaintiff lacks standing to sue. Article III limits the jurisdiction of federal courts making standing a constitutional prerequisite. To establish Article III standing, a plaintiff must show that he has suffered an injury in fact.

Here, plaintiff has not met his burden to establish jurisdiction because, first, he incurred no direct out-of-pocket cost to repair the original RV. It was all done under his warranty.

Plaintiff cannot represent a class without showing that he has personally suffered an injury. It makes no difference whether alleged unidentified class members suffer injuries. The plaintiff has to show that he suffered an injury.

Plaintiff has not alleged that the defect reduced the value of his trade-in. He made a voluntary payment to the electrician to modify his replacement RV, but that doesn't create standing.

And in support of that, we cited the *Clapper* case, a US Supreme Court discussion from 2013. There, the Court held plaintiffs cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending.

So plaintiff cannot manufacture standing by

inflicting harm on himself. In essence, that's what he did when he made these changes to his replacement RV. So simply alleging a defect doesn't create standing. The plaintiff has to show that he suffered an actual injury caused by the defect.

THE COURT: So he would have had to wait until the replacement RV had a fire start in the box?

MR. HAYDEN: Well, that's -- that would have been -- that would have been a harm to him. And then, presumably, that would have cost $300 to fix.

THE COURT: Assuming he put the fire out in time.

MR. HAYDEN: Yeah. Well, or $825. That's what the dealer charged. But, again, it was covered by his warranty. So this plaintiff didn't suffer that.

THE COURT: So I'm assuming the plaintiff is going to argue, "Look, I knew the replacement RV had the same defect as my original RV. So as a preemptive matter, I had the repair performed to avoid potential damage down the road."

That can't be the source of the damages here?

MR. HAYDEN: Well, if it is the source of the damages, first, it's not -- it's not an injury that he actually suffered.

THE COURT: Because of the warranty?

MR. HAYDEN: Yes. And if it is considered by this Court an injury, it's only $300, and it doesn't get to the CAFA level. I'm going back to the CAFA argument. But it's a -- you

know, our position is that it doesn't -- it doesn't reach Article III because this particular plaintiff didn't suffer an injury himself. What he chose to do was make a voluntary improvement to his RV.

On our other motion, in addition to our motion to dismiss for lack of jurisdiction, we also made a motion to dismiss for failure to state a claim under Rule 12(b)(6). If the Court exercises jurisdiction, it should dismiss the third amended complaint under 12(b)(6) for failure to state a claim. All of plaintiff's claims --

THE COURT: Hold on, Counsel. Let me go back to the damages for a moment.

Don't plaintiffs also allege some period of loss of use before they get the RV repaired?

MR. HAYDEN: They make a general allegation about that, but they don't allege any specific amount. They don't allege any specific damages related to that, just a general statement about lack of use. But they don't assign any monetary amount to that.

They also allege that the RV had a reduction in value, but that's based upon the fact that he traded in an RV that was relatively new. And you would expect when you trade in an RV that's relatively new, you're going to lose some value on that RV.

THE COURT: All right. Go ahead. The next argument

is about the failure to state a claim?

MR. HAYDEN: Yeah, but first -- the first claim I'd like to address is the Consumer Product Safety Act.

Forest River moves to dismiss the Consumer Product Safety Act for failure to state a claim. In paragraph 112 of plaintiff's third amended complaint, plaintiff claims that the RV's alleged defective wiring system violates the Consumer Product Safety Act.

The Court should dismiss plaintiff's claims under the Consumer Product Safety Act because the CPSA does not apply to RVs. The Consumer Product Safety Commission has issued an opinion confirming that it does not have jurisdiction over the design and construction of mobile homes or recreational vehicles. That's an opinion from the office of general counsel of the Consumer Product Safety Commissions. It's an advisory opinion dated August 31, 1973. So the plaintiff's claim, therefore, fails because the CPSA does not apply to RVs.

Additionally, the plaintiff is required to identify a CPSC rule or order that Forest River has allegedly violated. In support of that we cite the *in re Mattel* case, which is a 2008 decision out of California. And there, the Court held "Plaintiffs' failure to identify a consumer product safety rule or order of the CPSC is fatal as there is no private right of action under the CPSA itself absent a specific rule promulgated by the CPSC."

Here, the plaintiff has failed to identify how the alleged defective wiring system in the RV violated a specific CPSC rule or order. So the Court should dismiss plaintiff's CPSC claim because the CPSA does not apply to RVs, and plaintiff has failed to specifically identify a rule or order that Forest River has allegedly violated.

Next, plaintiff -- next, Forest River moves to dismiss plaintiff's negligence claim. Plaintiff's negligence claim should be dismissed because he has, one, not identified an injury or damages; and, therefore, he cannot draw a causal connection between any injury and Forest River.

Plaintiff has no specific injury related to the original RV. He alleges no specific cost related to his loss of use of the original RV. He does not allege that the wiring defect specifically reduced the market value of his original RV. He just says, "I traded it in, and I lost money on the trade-in." But, again, you'd expect that when you trade in a relatively new RV.

THE COURT: What about plaintiff's argument that Forest River owed a duty under the -- let's see. Where is it? -- the National Highway Transportation Safety Act safety standard?

MR. HAYDEN: Well, in the complaint itself, it alleges an action under the Consumer Products Safety Act.

THE COURT: Well, this is you have a duty to comply

with the National Highway Transportation Safety Act safety standard. So as a matter of law, if you breached that duty, you would be liable?

MR. HAYDEN: I'm not sure how that ties into the Consumer Product Safety Act.

THE COURT: No, this is on the negligence claim, the duty that they owe.

MR. HAYDEN: Oh, okay.

THE COURT: That they allege that you owe arises from the National Highway Transportation Safety Act.

MR. HAYDEN: Well, again, in a negligence case, the plaintiff has to show damages, and our point is he hasn't shown an injury here. His replacement RV was repaired at no cost to him, and he voluntarily decided to make this change to the replacement RV. That's a self-inflicted cost that --

THE COURT: Well, Counsel, how would you respond -- you have the plaintiff who buys an RV and has this incident with a fire. We have to take that as true for now. So if I get a replacement RV with the same kind of electrical box, chances are I might get a fire again. To avoid that contingency, I'm going to preemptively get the box repaired.

You have to wait around for the fire to happen?

MR. HAYDEN: Yeah, he's got to -- that's our view. Our view is that he has to have some actual physical injury or property damage in order to assert, for example, a negligence

claim. He can't just voluntarily make these -- what he considers improvements to his RV.

That's our view of the law of negligence, Your Honor.

THE COURT: All right. What about the negligent misrepresentation claim?

MR. HAYDEN: I'm sorry?

THE COURT: The negligent misrepresentation claim.

MR. HAYDEN: Plaintiff's negligent misrepresentation claim should be dismissed because he's failed to meet the heightened pleading requirements for negligent misrepresentation. The plaintiff alleges that Forest River certified that plaintiff's RV complied with the National Fire Protection Association's Standard 1192 for RVs, and that Forest River certified that plaintiff's RV complied with certain standards adopted by the Recreational Vehicle Industry Association, and he claims that these certifications were false.

In paragraph 74 of his third amended complaint, plaintiff alleges that the replacement RV was stickered with these certifications that it complied with these standards.

And then the third amended complaint goes on to make a lot of general statements about these standards. But plaintiffs have failed to allege that Forest River made a specific representation about the RV's wiring. And, most importantly, plaintiff has failed to allege that he read these

certifications and specifically relied upon them in deciding to purchase his RV.

A plaintiff cannot state a claim for misrepresentation by making general claims. A plaintiff asserting a claim for representation must state the time, place, and specific content of the false representation and, most importantly, here, specific reliance on that false representation.

And that's where their claim really falls apart. They don't allege that the plaintiff specifically relied upon these certifications when he made his decision to buy his RV. And that might sound like a technicality. But when you are dealing with the heightened pleading standards for negligent misrepresentation, he's really got to make a claim specifically that he relied on those certifications in deciding to buy his RV, and they don't make those allegations in their third amended complaint.

THE COURT: It's not enough to argue that, "Well, I bought an RV in part because, unlike a tent, an RV is like a moveable house. It comes with electricity. It can have lights running. It can have a stove operating and a refrigerator"? That's not enough?

MR. HAYDEN: It's not enough to have just -- to say, "I generally relied upon Forest River to manufacture and design a safe RV." He's got to say that "I specifically relied on a

specific representation that was a false representation in deciding to buy my RV." And that's -- he doesn't -- he doesn't make those specific allegations in the third amended complaint.

THE COURT: Even though the plaintiff argues that the RVs contain this sticker certifying compliance is a NHTSA standard?

MR. HAYDEN: Yeah, but he doesn't say that he specifically relied upon that certification in deciding to buy his RV.

There's a very good decision on this, I thought, out of the -- out of California. I'm trying to find it here, Your Honor. It's the *Lorenzo Ford v Hyundai* case. It's a 2021 decision out of the Central District of California. It really deals with a similar issue there, and I'd encourage you to look at that decision. I think that's --

THE COURT: What's the citation?

MR. HAYDEN: What?

THE COURT: The citation, please.

MR. HAYDEN: *Lorenzo Ford v Hyundai*, 2021, Westlaw 7448507.

It's also a good decision that I'm going to just address here in a few minutes on this -- on bringing a class action under Montana Consumer Protection Act. I think it contains an excellent discussion about that.

So, you know, what the court held there is that there

just wasn't a specific allegation of reliance in that case and dismissed the negligent misrepresentation claim.

Our final argument on this motion to dismiss is the fraudulent concealment and Montana Consumer Protection Act claims. And really it's the same argument as the negligent misrepresentation argument, Your Honor. It's our position that they just haven't specifically alleged that the plaintiff relied on a specific alleged false misrepresentation in deciding to buy his RV.

THE COURT: Is it a false concealment or misrepresentation on a standalone claim under Montana law?

MR. HAYDEN: We don't believe so, Your Honor.

Unless you have any questions, I'll go ahead and address the motion to strike.

THE COURT: Well, what about the Consumer Protection Act claim?

MR. HAYDEN: The Montana Consumer Protection Act claim?

THE COURT: Yes, please.

MR. HAYDEN: Yeah. Well, our view is it's very similar to the negligent misrepresentation claim. They just haven't met that heightened pleading standard under the Consumer Protection Act claim because they haven't alleged a specific false representation that the plaintiff relied upon to his detriment.

THE COURT: All right. Go ahead and talk about the motion to strike.

MR. HAYDEN: Thank you, Your Honor.

So Forest River moves to strike plaintiff's class allegations. If this Court does not dismiss plaintiff's complaint under Rule 12(b)(1) or 12(b)(6), it should strike plaintiff's class allegations under Rule 12(f).

Plaintiff, a Montana resident, bought an RV manufactured by Forest River. Forest River is incorporated in Indiana, and it is headquartered in Indiana. Plaintiff contends that the RV was defective, and he has sued Forest River on behalf of a putative national -- a nationwide class in a Montana subclass of RV purchasers. He alleges a mix of statutory negligence and fraud-based claims.

Regardless of whether plaintiff's claims are viable, he cannot maintain this action as a class action, and the Court should strike the class allegations at this point in the case rather than put Forest River through extremely expensive discovery before looking again at the class action allegations when they move to certify.

Now, we believe there are four independent reasons warranting striking the classes now. First, this Court lacks personal jurisdiction over Forest River with respect to the nationwide class. Forest River is not at home in Montana. Forest River is not subject to general jurisdiction in Montana.

Therefore, specific jurisdiction is the only viable basis for personal jurisdiction.

But plaintiff cannot show that the nonresident plaintiffs' claims arose in Montana. Plaintiff does not allege, for example, that Forest River designed or manufactured any RVs here in Montana. And the mere fact that plaintiff sued Forest River in Montana does not create a connection between the nationwide class members and this forum that supports specific jurisdiction.

THE COURT: Well, isn't it true that Forest River sells these products in Montana?

MR. HAYDEN: Yes. And we -- and we believe there is general jurisdiction; there's just not specific jurisdiction. There's not specific jurisdiction for these nationwide class action allegations against Forest River.

I can tell you that, you know, class action complaints have been filed against Forest River in the Northern District of Indiana, and that's where it's headquartered. That's where it manufactures its RVs. But it's not headquartered in Montana, and it doesn't manufacture RVs here in Montana.

In support of this argument, we rely on the US Supreme Court's decision in *Bristol Myers Squibb* and the California District Courts' decision *Carpenter v PetSmart*. The Court should not exercise personal jurisdiction over

nonresidents' claims against a nonresident defendant under the holding in *Bristol Myers*.

Now, we've acknowledged that *Bristol Myers Squibb* was a mass tort action and not a class action, but the *Carpenter PetSmart* case that we've cited was a class action. And around the nation, courts have split on whether *Bristol Myers* applies to class actions brought in federal court.

It is our view -- and we believe this Court should adopt this view -- that the *Bristol Myers Squibb* case applies to both mass tort actions and class actions.

THE COURT: Well, Counsel, plaintiff cites to decisions from the Seventh Circuit, the Sixth Circuit, the Third Circuit, and the DC Circuit that have rejected the *Bristol Myers* approach. Why don't those cases provide persuasive authority?

MR. HAYDEN: Well, Your Honor, we've cited quite a few cases from California that reached a different result, quite a few district court discussions from the Ninth Circuit. *Carpenter* is one of the best examples of that. And we discussed that in detail in our briefs, and we've cited other California decisions in the Ninth Circuit who've reached the same conclusion that the *Bristol Myers Squibb* case applies to both mass tort actions and class actions. So I guess we think they got it right.

THE COURT: Okay. You want to finish up with your

class action analysis?

MR. HAYDEN: Sure. Second, we believe the Court should strike plaintiff's class allegations because plaintiff's proposed class definitions are not ascertainable and comprise members who have suffered no actual injury.

In support of this argument, we rely on *Hovsepian v Apple* decision. That's a 2009 decision from the Northern District of California, and that's in our brief. In that decision the court granted a motion to strike the class definition because it included proposed class members who never experienced any defects with their iMac computer. So there, the plaintiff complained that he had some fuzziness on his screen and sought to bring a class action. But he sought to include class members who had never experienced any problems with their iMacs.

And we believe that case applies here because what the plaintiff seeks to do is include a whole class of buyers who've never suffered any wiring problems with their RVs. They've never had a -- they seek to include class members who've never experienced any damages or had any fires or had any issues related to this wiring problem. And without an actual damage, then we don't believe that they can be included in the proposed class, but the plaintiff has tried to include them in their proposed class.

Third, we believe the plaintiff lacks standing to

represent a nationwide class. Plaintiffs assert negligence, negligent misrepresentation, fraudulent concealment claims on behalf of a nationwide class, but they do not say which state laws should govern these claims.

And that's a significant problem here given the conflict between Montana law and the laws of 49 different states, especially as it relates to the Economic Loss Doctrine. Montana law cannot govern these claims of nonresident plaintiffs with no connection to this forum because the Court would be trying to apply the laws of 49 states to these various claims of negligent misrepresentation, fraudulent concealment, and the laws are different from state to state for those claims.

So if this Court were to take jurisdiction of those claims, then it would violate, we believe, constitutional due process and give Montana law extra territorial effect. The plaintiff lacks standing to asserted state law claims on behalf of nonresident plaintiffs, therefore, whose injuries arise outside of Montana.

We believe the plaintiff's alleged claims arose in Montana, meaning that the plaintiff can only assert claims under Montana law. And there really is no solution to this problem in our view other than to strike the nationwide class allegations. And the decision we rely heavily on for that is this *Carpenter v PetSmart* case again. It's that 2020 district

court decision from California.

Fourth, Forest River believes that the -- or takes the position that the Court should strike plaintiff's Montana subclass allegations under the Montana Consumer Protection Act because the Montana Consumer Protection Act expressly precludes plaintiffs from asserting claims under that statute on behalf of a class.

Now, we acknowledge that this Court reached a different conclusion in 2016 in the *Wittman v CB1 case. In Wittman*, this Court declined to follow Justice Stevens' concurrence in *Shady Grove*. And we acknowledge that this Court reaffirmed that holding in *Hill v LLR*.

But, in 2021, there was an important decision from the Central District of California, and that's the case I mentioned earlier, this *Lorenzo Ford v Hyundai* case, 2021 Westlaw 7448507. There, in a case that's very similar to this one, the Court held that Alabama and Colorado prohibitions on class actions for consumer claims were substantive law and not merely procedural.

And there, in that *Lorenzo Ford* decision, again, a decision dated in 2021, after your decision in *Wittman* and your decision in *Hill v LLR* -- or this Court's decision -- the *Lorenzo Ford* court followed Justice Stevens' concurrence and struck the class action allegations under those statutes.

It's our position that the MCPA prohibition on class

action is a substantive and not merely procedural holding in that statute; and, therefore, the Court should apply Justice Stevens' concurrence. And we urge you to review the *Lorenzo Ford* decision and apply that holding here.

Additionally, a recent 2022 decision in *Lee v Samsung* -- and that's out of the Southern District of Texas, 2022 Westlaw 4663878 -- held that a majority of courts have now concluded that Justice Stephens' concurring opinion in *Shady Grove* is controlling. So in that *Lee v Samsung* case, they reviewed the holdings on this and concluded that Justice Stephens' concurring opinion is now, according to a majority of the courts, the controlling decision out of *Shady Grove*.

So we urge you to apply Justice Stevens' concurring opinion and hold that the plaintiff cannot assert a class action under the Montana Consumer Protection Act.

THE COURT: Anything else, Counsel?

(Off-the-record discussion between Mr. Turner and Mr. Davis.)

MR. DAVIS: With all due respect, Judge, we think you erred, and we've given you an opportunity to correct yourself.

THE COURT: All right. Thank you.

For the plaintiffs, Mr. Turner.

MR. TURNER: Yes, Your Honor. Good afternoon. This is Tab Turner on behalf of the plaintiffs.

I briefly want to begin by going back through some of the factual background in order to make sure the Court is aware of a different -- slightly different set of facts as pled in the third amended or operative complaint.

Back in April of 2019, Mr. Nelson purchased a new Puma fifth wheel RV in Montana, contrary to what the defendant has represented today. The Court can refer to paragraphs 45, 46, 65, 67, 137, and 139 for the statement and the pleading that Mr. Nelson, during the course of the purchase, unequivocally -- unequivocally relied on Forest River's certification that the RV met the applicable safety standards on the stickers and that its representations regarding the RV being dependable, safe, conscientiously built, and inspected were in fact true.

In May of 2020, Mr. Nelson and his family took the RV out for the first time in 2020 when it caught fire as they were exiting the campground. Mr. Nelson extinguished the fire rather quickly, and at that point in time it had been towed for less than 250 miles.

Following the fire, Mr. Nelson took the RV to the Forest River dealership where service representatives explained to Mr. Nelson that the fire risk was something they already had some familiarity with, and they proceeded to repair it. Unbeknownst to him, however, the dealership repaired the damage to the RV but left in place the same defective wiring system

that existed when it was originally sold, and the dealership charged Mr. Nelson $825 to repair the burned wires.

Because of the RV fire and Mr. Nelson's family's concerns, they were obviously fearful at that point in time about, with less than 250 miles, the thing burning up. The family decided to get rid of it in June of 2020. He originally paid $34,613 for the RV. He only received $26,000 in a trade-in, which resulted in an economic loss of $8,613, as pled in paragraphs 64 and 71 of the operative complaint.

Mr. Nelson had no RV to use from May 29th to June 19th of 2020, which was directly attributable to the fire. Mr. Nelson had paid --

THE COURT: What is that worth, Mr. Turner?

MR. TURNER: May 29th through June 29th, 2020?

THE COURT: Right, and no RV for that period. Does Mr. Nelson have a limited number of vacation days per year? What did he do for a living?

MR. TURNER: Your Honor, we haven't calculated in terms of that. We can certainly put an estimate on it. We have not put an estimate on it. We intended to use an economic analysis from a retained expert in order to make that calculation, but we have not made that calculation as of this date.

Now, Mr. Nelson had to pay $2,500 for a warranty on the RV, and he had traded in the 2019 model for a 2020 model,

which was basically fundamentally the same RV. Keeping in mind and bearing in mind that at that point in time he did not know the wiring system was defective.

Following these transactions, Forest River reimbursed the dealership $825 for its repair of the burnt wires under the warranty policy but then refused to compensate Mr. Nelson for any of his other economic damages, which were in excess of $8,000.

Unsatisfied and disturbed, Mr. Nelson turned to the legal system, retained a lawyer who retained a professional electrician in December of 2020, who identified the defective system in the RV. Following that, the operative complaint was -- the lawsuit was initiated, and the operative complaint ended up being filed.

So, in short, that is the difference between the factual scenario that the defendant raised today and that which has been pled in the case.

Moving on document number -- Court's Document Number 49 to the CAFA requirements, the operative complaint alleges that $300 was originally what the electrician was paid, but then later he had to do some more work which now totaled $500, and that excluded the cost of the component parts. And the operative complaint alleges at paragraph 11 that the reasonable value -- the reasonable cost of the repair work is $825 in damages, excluding attorney's fees and any

putative damages that might be associated with it.

With regard to the CAFA requirements, there's no question that Mr. Nelson is diverse. There's no question that there are over 100 potential class members or class members. And the only dispute is the defendant's claim that the class claims do not aggregate more than 5 million in claims.

Do you mind if I share a screen with you for a minute, Your Honor?

THE COURT: Go ahead, please.

MR. TURNER: This is the CAFA jurisdiction elements, and this next slide is the calculation based upon the pleadings -- the operative complaint, the pleading filed in the case.

There are actually 10,345 class members. That figure is different from the 12,000 because the 12,000 figure that the defendant -- that the defense mentioned includes all Puma vehicles, both US and Canada. The 10,345 are only the US versions, and it is our contention the class members are only US citizens.

And then if you take the ten thousand thirty-five, and you multiply that by $825 each, which is what the operative complaint contends the cost to repair the RV is, you get a total of $8,534,625. And I put corrected damages on this just to reflect that we dropped down from US and Canada RVs to just US RVs. So that does, in fact, exceed the aggregate amount as

pled.

Now, the operative standard that the Court -- it's my understanding at least based upon the case law, the operative standard is whether the plaintiff has pled damages in good faith and whether, as a matter of legal certainty, the plaintiffs could not obtain the amount requested. We don't believe that standard has been met in challenging our damage calculation.

The simplistic calculation shows that the potential damages as calculated pursuant to what has occurred in the past with proven numbers is in excess of $8 million.

THE COURT: Mr. Turner.

MR. TURNER: Yes.

THE COURT: Let me just clarify something. The $825 in damages, that's the $300 in the electrician's original bills; plus $500, the cost of new component parts?

MR. TURNER: Not quite. What the $825 represents -- the $825 was charged, but directly by the dealership to replace the wiring in the 2019 Puma. So that is some evidence of what the cost to replace the wiring is. That is without remedying the defect in the wiring. That's just simply replacing the wiring.

The cost to repair the defect, in addition to the cost to repair the wires, was between $850 and $1,000 per RV. That's likewise pled. And it cost --

THE COURT: Is that amount covered by any warranty?

MR. TURNER: No, sir. That amount is not covered by any warranty.

And it cost, at least according to the calculations that we have pled, it cost an additional $500 to hire an electrician to repair the defective system exclusive of the component parts.

So the calculations that we have provided in the operative complaint do not even include the component parts and are a minimum of $825 for simply repairing the defective wires, and then an additional $825, according to what we pled, for actually remedying the defect that exists in all of these RVs.

Now, the second issue raised by the defendant is that the complaint does not plausibly set forth claims of wiring defects. And if the Court will give me permission, I will move to the slide again.

THE COURT: Go ahead, please.

(Complying.)

MR. TURNER: This slide excerpts out paragraphs 43, basically, through 88, non-inclusive, to summarize all of the facts giving rise to the claims of defect that exists in this RV's wiring system.

And to make a long story short, these stickers that are placed on the individual RVs specifically reference that there was compliance with these standards and that Forest River

had certified compliance with these standards. And it was relied upon, of course, by Mr. Nelson as pled in the complaint.

And in addition to that, the standards refer to specific guidelines that are set forth, for instance, NFPA 1192, considerations that must be observed when installing RV equipment. And it specifically sets forth what the rules -- what the safety rules and regulations are pertaining to the wiring system in the RVs.

And the long and short of it is, not only have we plausibly pled that the defendants violated these standards, we've very specifically referred to the sections that were violated, what was violated, when it was violated, how it was violated, who violated it, and in the manner in which it was violated.

So we believe that we have not only very clearly set forth in the complaint our allegations, but they are not only plausible, they are matched up with the respective standards that were violated.

Now, with respect to proof of manifestation of a defect, the defendant, as I understand it, argues that proof of the manifestation of the defect is not a -- is a prerequisite. However, we cited the Ninth Circuit case of *Blackie v Barrack,* which was a decision that held that the proof of manifestation of the defect is not a prerequisite to class certification.

And as a consequence, we don't believe the

defendant's argument that simply because somebody else's RV has not burned up yet, that that somehow precludes this claim. We disagree respectively with the defendant's arguments.

Now, with respect to the individual claims, the violation of the Consumer Products Safety Act, there is an exception as we noted in our briefing, and I won't go through all of the respective details.

But to make a long story short, the CPSC will refuse jurisdiction over component parts that are exclusively designed, manufactured, and sold as a component part for RVs. However, they have concurrent jurisdiction, which they've made crystal clear, when an RV manufacturer, like Forest River, incorporates component parts that are not exclusively designed to manufacture and built into RVs.

In this specific instance, Forest River used residential components in an RV, which means that they are not exclusively manufactured for RVs, which means that the CPSC does in fact have concurrent jurisdiction over that claim.

We don't believe that a motion to dismiss in light of the concurrent jurisdiction of the CPSC is the appropriate result at this stage. Maybe a summary judgment later, if they believe they're entitled to summary judgment, but certainly not in the context of a motion to dismiss.

And we cited the Court to the rulings from the CPSC over the years that have come out referencing this concurrent

jurisdiction and the validity of the concurrent jurisdiction.

Now, moving to the negligence claim, the defendant argued that, at least as I understood it today, which was slightly different than I understood the papers, that somehow you cannot voluntarily make an improvement to a product like this RV, and that somehow excludes the negligence claim.

I, quite frankly, am confused by that. This was not an improvement. This was repairing a defective condition in the product, a defective condition that existed, we contend and the operative complaint contends, directly as a result of Forest River's negligence in violating its duty to follow the rules, its duty to use a wiring system that complied with the standards, and follow a duty that it had also acquired -- it had voluntarily acquired as a result of the National Highway Traffic Safety Administration investigations.

Now, with respect to the damage part, the damage part of any negligence claim, of course, includes being able to trace back the damages to the negligent conduct, herein, being the use of a defective wiring system. We specifically allege in the complaint that Nelson alleged out-of-pocket repair expenses, loss of use damages, diminution in value damages, and we also allege a causal connection between Forest River's conduct, the defects, and the plaintiff's damages.

And our contention is that Forest River could and should have reasonably foreseen that manufacturing and selling

RVs in violation of the safety standards that it had agreed to comply with would likely result in property damage and the risk of serious injury or death in a given circumstance.

Now, moving to the negligent misrepresentation claim, we respectfully disagree with Forest River. We think we have met any heightened pleading standard under Rule 9(b), with respect to the negligent misrepresentation and the fraud claim, in that not only have we provided who, what, when, where, and how, we have actually provided examples of the misrepresentations and the fraud that took place. We have shown the stickers. We have quoted from the standards. We have given very specific detail about the fraud and negligent misrepresentations that have taken place.

And with respect to damages, the same argument about precluding an award of damages based on consequential damages has specifically been rejected by the Montana courts under *Bokma Farms v the State*. That's 302 Montana 321, a 2000 decision that references a Restatement (Second) of Torts, Section 552B, which sets forth the appropriate measure of damages for negligent misrepresentation.

And it specifically says that for the recovery of consequential damages sustained as a result of a plaintiff's justifiable reliance on a negligent misrepresentation, that the damages can be either contractual in nature or tortious in nature; and that the consequential damages can be recovered

either scenario; and that the consequential damages under a contract scenario are limited to those within the contemplation of the parties but, in the tort context, do not have to be within the contemplation of the parties to begin with, but rather are any damages reasonably associated with and related to the negligent misrepresentation.

And with respect to the kinds of damages that one can receive in Montana for negligent misrepresentation, there are some examples set forth in a case referred to as *Montana Petroleum Tank Release Compensation Board v Crumbleys,* 341 Montana 33, a 2008 decision which goes through and categorizes the kinds of consequential damages permissible for negligent misrepresentation in Montana, including lost profits, including administrative costs, including cleanup costs, and including any reasonably foreseeable expenses that might have been incurred by the injured party.

In addition to that, there's another case called *Wittman*, W-I-T-T-M-A-N, *v City of Billings,* 2022 Montana 129, that refers to the fact that even additional construction and costs to remedy a problem or defect and the just compensation for actually depriving the party of the property for a specified period of time are both recoverable damages in the context of a negligent misrepresentation claim.

Now, moving to number D, the fraudulent concealment claim, there's been some discussion in the -- at least the

pleadings, I didn't hear it today as much -- but in the pleadings about fraudulent concealment being limited to the context of statute of limitations.

I would simply say this: It's a question of semantics. Because when you read the operative complaint, it's quite -- and you read Montana law, it's quite clear that Montana does recognize that fraud can result from one's failure to disclose material facts to another, which is the equivalent of concealing facts. And so it's just a matter of semantics whether you call that fraudulent concealment or fraud.

But when you look at the gist, when you look at the gravamen of the count for fraudulent concealment, the issue is not what we're calling it, but rather what is a factual claim being made. Here, we are claiming the fraud was the intentional choice that Forest River made, the intentional decision they made to not disclose the truth about their lack of compliance with the safety requirements or, stated differently, concealing the truth about the lack of compliance.

And, of course, all of the damages we've already covered in the context of negligent misrepresentation because those same damage elements, the same measure of recovery applies in the fraud context as it does in the negligent misrepresentation.

And, lastly, with respect to the MCPA claim, the criticism that I read in the briefing I didn't quite hear

today, but I want to address what was put in the briefing. They claim that we did not identify any deceptive or unfair acts or practices by Forest River that would give rise to a MCPA claim under Montana law. We very much disagree with that.

If you look at *Rohrer*, R-O-H-R-E-R, v *Knudson*, K-N-U-D-S-O-N, 349 Montana 197, a 2009 decision under Montana, the Court held that the MCPA does not have to -- have a proven unlawful act, but any act that offends public policy, that offends a statute, or even offends common law, such as a common law fraud or a negligence claim, or otherwise, is considered in Montana to be unfair and deceptive when it causes injuries to consumers. So we would respectfully disagree that we have not stated a claim under the MCPA in Montana.

There was no discussion about the declaratory relief part of it. We did brief that. If you would like for me to discuss that, I'd be glad to because we do believe the declaratory relief does have a role in this scenario. Because the key allegation made in the operative complaint is that this product, this RV, including potentially other models made by Puma, have an allegation of an imminent threat of future injury due to the fire risk involved in these products. And as a consequence, there is an element of declaring future rights at issue in this particular case. It's not simply limited to damages as has been in some other cases.

Now moving -- unless the Court has a question, I'm

moving to Document 51, which is a motion to strike.

THE COURT: Go ahead, please.

MR. TURNER: With respect to the first issue, personal jurisdiction, this is a relatively straightforward issue. I'll address it very briefly.

This relates to the *Bristol Myers* issue of how do you interpret the *Bristol Myers* decision from the Supreme Court given that *Bristol Myers* was a mass tort case, not a class action? And the *Carpenter* decision very specifically, which preceded the decisions by the Sixth, Third, and Ninth Circuit in *Lyngaas*, *L-Y-N-G-A-A-S, Kelly*, and *Moser*.

Mosure was a Ninth Circuit case. Unfortunately, the Ninth Circuit did not have a -- did not take the opportunity to reach the issue, as the Court probably knows, due to the waiver argument that was made in that case. They never did specifically directly address head-on the rulings of the Sixth and Third Circuit.

But the language from the *Mussat*, M-U-S-S-A-T case, a Seventh Circuit case, that the Sixth and Third Circuit followed, and I'll quote for the Court, "Once certified, the class as a whole is the litigating entity, and its affiliation with a forum depends only on the named plaintiffs."

The Supreme Court has regularly entertained cases involving nationwide classes where the plaintiff relied on specific rather than general personal jurisdiction in the trial

court without any comment about the supposed jurisdictional problem that the defendant raises.

In short, we don't think there's any merit to following the *Carpenter* decision in light of the decisions from the Seventh, Sixth, and Third Circuits, and in light of also the fact that the Ninth Circuit, although they did not address the issue of waiver, they did refer to two of those other decisions.

Now, with respect to the ascertainability argument, the complaint -- the operative complaint that we're dealing here, this is sort of either a misunderstanding of the operative complaint's allegations or it's just an ignorance of what the operative complaint says. Because the operative complaint very clearly alleges with striking detail that the RV wiring system defects violate safety standards in the following ways: There's no over-current protection. There's inadequate protection against weather and physical damage. There's inadequate junction boxes. There's inappropriate metal clamps and grommet fuse. There's total lack of wire protection, all of which are required by the very standard organizations that Forest River said they complied with and put stickers on the RV when, in fact, they're in clear violation of those standards.

And the complaint makes it very clear that the class includes both himself, Mr. Nelson, and others like him.

And just to make crystal clear, there are two groups

that the plaintiffs contend should be part of this class. One are those people with fires, and one are those people who have not yet had a fire. Because, here, Mr. Nelson has suffered from both. He had a Puma that caught on fire, and he also had one that did not catch on fire, and that is the one that identified the defects in the vehicle. And there is economic loss associated with the first one, as we know, as well as the second.

We've already touched on the damage provisions of the operative complaint as set forth. And paragraph 5 and also paragraph 89 of the operative complaint defines the classes to include those who purchased an RV in the United States with the specifically defined defects that are set forth with particularity in the operative complaint. And we allege that all of these class members include those with the defect, that all suffered harm, and that an injury in fact occurred because they have taken the class member's money through the use of deceptive conduct and misrepresentations about the existence of compliance with the safety standards associated with this particular RV.

The next issue is standing. Forest River makes three arguments under the umbrella of its standing argument: Number 1, state laws vary, and the Court cannot apply the law of another jurisdiction absent a putative class representative from that jurisdiction; Number 2, that the Court cannot apply

Montana law to resolve all the nationwide class claims; and, Number 3, that Mr. Nelson has standing to assert claims under Montana law only.

Article III standing, as the Court is well aware, is satisfied if one named plaintiff meets the requirements, and here we have that. That's the *Bates* case. If one named plaintiff meets the requirements, standing has been complied with in the context of Article III. It means he suffered an injury. The injury is traceable to the conduct. And the injury is likely to be redressed by the action, all of which exist here.

And in the *Langan* case, L-A-N-G-A-N, cited in our brief, the court -- the Second Circuit addressed this very issue of standing and rejected the argument that Forest River makes today noting that class actions under Rule 23 are an exception to the rule; that one person cannot litigate injuries on behalf of others.

The Rule 23, the Second Circuit noted, Congress has authorized plaintiffs to bring a suit in federal court on behalf of, not just themselves, but others from different states, and that such suits result in efficiencies of cost, time, and judicial resources and permit a collective recovery where obtaining the individual judgments might not be economically feasible.

And we would argue, Your Honor, that this is the

classic case of when a class action, especially a nationwide class action, is warranted because the damages are too small for each of these individual plaintiffs that receive these defective RVs to pursue. And the risk, however, is great in that somebody could die in a fire very easily if they haven't already died in a fire in one of these RVs.

The analysis should occur, according to the Second Circuit, under Rule 23 and not just standing arguments made by Forest River in this case.

Now, there are a number of Ninth Circuit cases that come out of the district courts, that some go one way and some go another. We could cite just as many as Forest River could cite that say the opposite of Forest River's position. The Second Circuit is the only circuit that we've been able to identify that has very clearly and straightforwardly addressed this issue that the defense barring class action cases have been raising that specifically says that Rule 23 is the appropriate analysis to follow, not an Article III standing analysis.

And, lastly, with respect to the choice of law issues, the courts have routinely, as we pointed out in our brief, pointed out that choice of law issues are for the class certification stage, not a motion to dismiss stage, under Rule 23. And the standing analysis does not apply at this stage to that part of the issue, the choice of law.

And lastly, Your Honor, the Montana Consumer Protection Act claim, I won't spend too much time with this one. It doesn't take long for somebody to note your experience with it.

But, in short, Forest River contends that the cases outside of Montana since *Wittman* show that *Wittman* is no longer good law. That's their precise words. However, in *Hill v LLR, Inc.*, this Court reviewed *Wittman*, reaffirmed its holding, and rejected the exact arguments Forest River is now recycling.

For the same reasons as were explained in *Wittman* and *Hill*, the plaintiff believes that the MCPA's purported class action prohibition does not apply to this case, and Forest River's argument is without merit.

And unless the Court has any additional questions for me, that's all I've got, Your Honor.

THE COURT: All right. Thank you, Counsel.

Mr. Hayden, I'll give you a brief rebuttal.

MR. HAYDEN: Yes, sir.

The claims against Forest River just keep moving, and today is further evidence of that. The plaintiff is now claiming that the cost of repair is $825. Well, that's actually the cost that the dealer incurred to replace the damaged wiring. That's not the cost that a person would incur to make these changes to their RV absent any kind of damaged wiring.

THE COURT: Well, Counsel, let's clarify something. You say, "damaged wire." Are you talking about wire damaged during the trial fire on the first RV?

MR. HAYDEN: Yes, yes.

THE COURT: All right. So if I just wanted to go in and upgrade or replace wiring on a recently sold RV, how much would that cost?

MR. HAYDEN: Well, according to the plaintiff, it cost $300. That's specifically what they said in their preliminary pretrial statement. On page 37, they said that it would cost $300 to make these changes to reach compliance with the NFPA and ANSI. So that's their position that they have filed in the pretrial statement with this Court that it would cost $300. And they said in earlier complaints that the plaintiff incurred a cost of $300 to make these changes. So I feel like they're comparing apples to oranges.

And I think it's also significant that in their third amended complaint they allege that there were 12,662 Puma fifth wheel RVs sold. And then you hear today the plaintiffs were saying, no, it's 10,345. So if you take 10,345 times 300, you're even further below the $5 million CAFA threshold.

Your Honor asked me if a person pays for their warranty, and I said, "I'm not sure." I am not sure. And I see now that the plaintiff alleges in his complaint that he paid 2,500 for a one-year warranty. I am just not sure whether

or not customers pay for that warranty or not. So I just want to make that clear that I'm not sure on that.

One other very quick point, on the application of *Bristol Myers* decision, there's one other important case out of Arizona, and that's *Wenokur* -- and I might be mispronouncing that. It's W-E-N-O-K-U-R -- *v AXA*. It's a 2017 decision out of Arizona. The cite is 2017 Westlaw 4357916, and there the Court held that the analysis in *Bristol Myers* should apply to class actions.

The argument about the Consumer Protection Act, they seem to be arguing that a metal junction box isn't appropriate for RVs. But this metal junction box that they are talking about is inside the RV. It's not something that is exposed to rain or weather. It's inside the RV itself. And what they are saying is that instead of having a metal junction box, you should have a plastic junction box. And they even take a picture of it, and show you that you can buy this on Amazon.

Well, that is just an upgrade. It's not a -- it's -- not getting into the substance of the case, we don't believe it's necessary for inside of an RV to have a plastic junction box. A metal junction box is fine inside of an RV.

And, again, going back to our argument, it just -- the Consumer Protection Act is very clear that it doesn't apply to RVs. And so to take component parts and pull them out of a product that the consumer Protection Act doesn't apply to and

start pulling those parts out and saying the Consumer Protection Act should apply to this specific component part, that seems to me to be an abuse of the Consumer Protection Act and not what it's intended to cover.

THE COURT: All right. Anything else?

MR. HAYDEN: No, sir.

THE COURT: Thank you, Counsel. This matter is submitted. I will have an order out as soon as possible.

Anything else to address today, Mr. Turner? Are you still around?

MR. MARR: No, Your Honor.

MR. TURNER: Yes, I'm still here. Nothing for the plaintiff, Your Honor.

THE COURT: All right. Well, thank you for your time, Counsel. We'll be in recess.

(The proceedings concluded at 4:06 p.m.)

--oOo--

REPORTER'S CERTIFICATE

I, Yvette Heinze, a Registered Professional Reporter and Certified Shorthand Reporter, certify that the foregoing transcript is a true and correct record of the proceedings given at the time and place hereinbefore mentioned; that the proceedings were reported by me in machine shorthand and thereafter reduced to typewriting using computer-assisted transcription; that after being reduced to typewriting, a certified copy of this transcript will be filed electronically with the Court.

I further certify that I am not attorney for, nor employed by, nor related to any of the parties or attorneys to this action, nor financially interested in this action.

IN WITNESS WHEREOF, I have set my hand at Great Falls, Montana, this 5th day of March, 2023.

/s/ *Yvette Heinze*

Yvette Heinze
United States Court Reporter